IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 456 of 2006.

Date of decision: 20.12.2006.

Shyam Parshad ….. **Appellant.**

Vs.

Kuldip Singh & ors. …. **Respondents.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?[1]

For the Appellant : Mr. Anuj Nag, Advocate.

For the Respondents : Mr. Ramakant Sharma, Advocate.

Surjit Singh, Judge (Oral).

Heard and gone through the record.

2. Suit for specific performance of an agreement to sell certain immovable property was filed in the year 1993 by the respondents against the present appellant. Trial court after holding the trial, decreed the suit and passed the following decree:-

> "In view of my discussion and findings on issues No. 1 to 5 above, the suit of the plaintiffs succeeds and as such, decree for possession by way of specific performance of agreement to sell dated 17.10.1990 in respect of the land in suit on payment of Rs. 55000/- being balance consideration is passed in favour of the plaintiffs and against the defendants with costs."

3. Appellant went in appeal to the court of District Judge. Appeal stands dismissed.

Whether the reporters of the local papers may be allowed to see the Judgment?

4. The decree, as passed by the trial court and affirmed by the first appellate court, is assailed on the following two grounds:-

(i) The decree is a nullity, because unless a direction is given in the decree for the execution of the sale deed, decree for possession cannot be passed in a suit for specific performance; and

(ii) Grant of decree for specific performance of contract is a discretionary relief and lapse of a long period disentitles the plaintiff to claim such a relief.

5. As regards first contention, no doubt, the decree is not happily worded, but in substance, this is a decree for specific performance of the agreement. As a matter of fact, the decree should have directed the appellant- defendant to execute the sale deed and get the same registered in favour of the respondents- plaintiffs, in terms of the agreement on payment of the balance sale consideration by the respondents- plaintiffs on or before a specified date. Though the decree reads that it is for possession by way of specific performance of agreement dated 17.10.1990 on payment of Rs.55,000/-, being the balance sale consideration, it does not specifically direct the appellant-defendant to execute the sale deed, if the respondents-plaintiff pays the aforesaid amount of Rs. 55,000/-, being the balance sale consideration by a specific date. This is a technical defect of formal nature, which is hereby cured and in place of the decree passed by the trial court and as affirmed by the first appellate court, the following decree is passed:-

> The appellant –defendant is directed to execute and get registered the sale deed in respect of the property described in the agreement to sell dated

17.10.1990 in favour of the plaintiffs- respondents on the payment of the balance sale consideration of Rs.55,000/- by the respondents- plaintiffs on or before 31st January, 2007 and to deliver the vacant possession of the said property to the respondents- plaintiffs at the time of execution and registration of the sale deed.

6. Next submission is also without any merit. Agreement was executed in the year 1990. Suit was filed in the year 1993. It is true that now we are in the year 2006, that too in the month of December, but the respondents- plaintiffs are not to blame for this long delay. The matter has remained pending in the courts for long 13 years.

7. Since no substantial question of law arises, the appeal is dismissed.

December 20, 2006. **(Surjit Singh)**
(*Hem*) **Judge.**